IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 10TH DECEMBER 2007 / 19TH AGRAHAYANA 1929

WP(C).No. 36418 of 2007(I)

AGAINST THE ORDER DATED / / IN EP 183/2005 IN OS.242/2002 of SUB COURT, MAVELIKKARA
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PETITIONER:

NARAYANA KUMAR @ NARAYANA PILLAI,
S/O.CHELLAPPAN PILLAI, POONURUTHA VEETTIL,
PATHIYOOR KIZHAKKUM MURI, PATHIYOOR VILLAGE,
(VIA) KAYAMKULAM, ALAPPUZHA DISTRICT.

BY ADV. SRI.G.HARIHARAN

RESPONDENTS:

RENJITH KUMAR.T., S/O.THANKAPPAN PILLAI,
ERUMAKKAD PADEETHATHIL, PILAPPUZHA MURI,
HARIPPAD, ALAPPUZHA DISTRICT.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 10/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.KRISHNAN, J

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W.P.(C) No.36418 OF 2007

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Dated this the 10th day of December 2007

JUDGMENT

This writ petition is filed to set aside the order of arrest in E.P.No.183 of 2005 in O.S.No.242 of 2002 of the Sub Court, Mavelikkara. Learned counsel for the petitioner submits before me that the judgment debtor originally entered appearance after Order 21 Rule 37 notice and filed his objections. Thereafter due to the continuous absence of the decree holder, the E.P. was dismissed for default on 22.9.2006 and on 11.9.2007 the E.P. was restored to file and posted to 16.10.2007. On that day, on account of the non appearance of the judgment debtor, the affidavit was accepted and arrest was ordered. In pursuance of the warrant of arrest he has been arrested, brought before court and has been released on personal kaichit. If the restoration has been done without notice, it is improper. Similarly, when the respondent is brought under arrest under Order 21 Rule 40 C.P.C., certainly the court can give an opportunity to the decree holder as well as the judgment debtor to prove their respective contentions. Therefore when he re-appears on the basis of the kaichit before court and before he is sent

to prison under Order 21 Rule 40 if he wants to plead no means, he must be given an opportunity to prove no means and thereafter appropriate orders can be passed.

Therefore the writ petition is allowed and the court below is directed to hear the judgment debtor regarding the means after giving him an opportunity as well as giving an opportunity to the decree holder and thereafter pass appropriate orders in the light of the finding on means. Till then the judgment debtor may be released on personal kaichit.

M.N.KRISHNAN, JUDGE

Cdp/-